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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/828,588	04/22/2004	Sheldon Schmidt		5560
25889	7590	05/04/2005		
WILLIAM COLLARD COLLARD & ROE, P.C. 1077 NORTHERN BOULEVARD ROSLYN, NY 11576			EXAMINER COURSON, TANIA C	
			ART UNIT 2859	PAPER NUMBER

DATE MAILED: 05/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/828,588

**Applicant(s)**

SCHMIDT, SHELDON

**Examiner**

Tania C. Courson

**Art Unit**

2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>26 JUL 04</u> | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 26-35 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted element is: The cover for the open top which is required for the device to work.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 15, 25 and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Jacoff (US 3,593,428, 1<sup>st</sup> interpretation).

Grubb et al. disclose in Figures 1-6, a level comprising:

With respect to claim 1:

- a) a frame having an edge rail (3) and a web (4) extending from said edge rail at right angles thereto (Fig. 1), a web opening in said web (Fig. 1), a capsule assembly (10) mounted on said web at said web opening (Fig. 1), said capsule

assembly comprising a transparent capsule (10) having a liquid therein (Fig. 6) and outer cover plates (6) mounted over said capsule on each side of said web (Fig. 4), the volume of the liquid in said capsule being less than the volume of the interior of said capsule (Fig. 1) whereby an upper surface of said liquid is formed the entire surface of which is viewable through the transparent capsule (Fig. 1).

With respect to claim 15:

- a) a frame having an edge rail (3) and a web (4) extending from said edge rail at right angles thereto (Fig. 1), a web opening in said web (Fig. 1), a capsule assembly (10) mounted on said web at said web opening (Fig. 1), said capsule assembly comprising a transparent capsule (10) having a liquid therein (Fig. 6), the volume of the liquid in said capsule being less than the volume of the interior of said capsule (Fig. 1) whereby an upper surface of said liquid is formed the entire surface of which is viewable through the transparent capsule (Fig. 1).

With respect to claim 25:

- a) said capsule assembly comprising a transparent capsule (10) having a liquid therein (Fig. 6), outer cover plates (6) adapted to be mounted over said capsule on each side thereof (Fig. 4), the volume of the liquid in said capsule being less than the volume of the interior of said capsule (Fig. 1) whereby an

upper surface of said liquid is formed the entire surface of which is viewable through the transparent capsule (Fig. 1).

With respect to claim 36:

- a) said capsule being transparent (10) and having a liquid therein (Fig. 6), the volume of the liquid in said capsule being less than the volume of the interior of said capsule (Fig. 1) whereby an upper surface of said liquid is formed the entire surface of which is viewable through the transparent capsule (Fig. 1).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2-14, 16-23, 26-35 and 37-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jacoff (1<sup>st</sup> interpretation) in view of Jacoff (2<sup>nd</sup> interpretation), Goss et al. (US 5,749,152), and Shirai et al. (US 5,111,369).

Jacoff discloses a level, as stated above in paragraph 4.

Jacoff further discloses the following:

- a) wherein an end flange (30) extends from each of end walls (Fig. 6) and wherein said end flanges abut against the said web (Fig. 4);
- b) wherein fastening means (31) are provided to fasten the end flanges to the web (Fig. 6), said fastening means extending through said end flange and into said web (Fig. 6);
- c) wherein said outer cover plates are affixed to each other from opposed sides of said web (Fig. 4);
- d) wherein the outer cover plates comprise a front face (Fig. 4), a window (9) in said front face through which said capsule may be seen and (Fig. 1), wherein said outer cover plates have a peripheral wall (8) extending from said front face (Fig. 1);
- e) wherein said peripheral wall is adapted to bear against said web adjacent to the capsule (Fig. 1);
- f) wherein said window in each of said cover plates has a ridge (11) extending inwardly and adapted to abut against the side walls of the capsule on either side thereof (Fig. 3).

Jacoff does not disclose the following:

- a) wherein a capsule comprises opposed side walls, opposed end walls, a bottom wall and an open top;
- b) wherein a bottom wall has a bottom flange extending therefrom;
- c) wherein a cover is provided to close said open top of the capsule;

- d) wherein said side walls are flat and parallel to each other;
- e) wherein said capsule is rectangular in shape;
- f) wherein said side walls have reference line markings thereon;
- g) wherein a notch is provided and wherein a fastening member extends from the front face of an outer cover plate through said notch and into the front face of the other outer cover plate.

Goss teaches a level that consists of wherein a capsule comprises opposed side walls (Fig. 1), opposed end walls (Fig. 1), a bottom wall and an open top (Fig. 1); wherein a cover (14) is provided to close said open top of the capsule (Fig. 1), wherein said side walls are flat and parallel to each other (fig. 1); wherein said capsule is rectangular in shape (Fig. 1). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the level of Jacoff, so as to replace Jacoff's open top and rectangular level with the cylindrical level as taught by Goss because both are well known alternate types of shapes of levels which will perform the same function of visually indicating the state of being level.

Regarding claims 5, 19, 28 and 39: Jacoff and Goss et al. disclose a level having flanges on the ends. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide a flange on the bottom wall, since it has been held that the mere duplication of the essential working parts of a device involves only routine skill in the art.

*St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8. Therefore, one skilled in the art would use a multiple of the flanges in order to suit the needs of the user of the device.

Regarding claims 9, 23, 31 and 43: Jacoff and Goss et al. discloses the level having side walls having a reference line markings thereon. Changing the location of the reference line markings from the location shown by Jacoff and Goss et al. to a location on the top wall, absent any criticality, is only considered to be an obvious modification of the Jacoff and Goss et al. device that a person having ordinary skill in the art at the time the invention was made would be able to provide using routine experimentation since the courts have held that there is no invention in shifting the position if the operation of the device would not be thereby modified. *In re Japikse*, 86 USPQ 70 (CCPA 1950). Therefore, one skilled in the art would change the location of the reference line markings in order to suit the needs of the user of the device.

Shirai et al. teaches a level that consists of wherein a notch is provided (Fig. 20, notch 73b) with a fastening member (Fig. 20, 73a). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the level of Jacoff and Goss et al., so as to include a notch and fastening member as taught by Shirai et al. in order to provide an increase in securing the level against another surface. Furthermore, it would be inherent that since the Jacoff and Goss et al. references show the same structure as the invention, a level with a capsule assembly and cover plate, that the notch of Shirai et al. would extend through the cover plates.



*Conclusion*

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The prior art cited on PTO-892 and not mentioned above disclose a level:

Jacoff (US 6,735,880 B1)

Copeland (US 4,532,718)

Curtin et al. (US 3,385,258)

Volk (US 2,525,387)

Holloway et al. (US 2,453,091)

Heinze (US 1,898,367)

Coleman (US 1,298,010)

Adkins (US 1,205,956)

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tania C. Courson whose telephone number is (571) 272-2239.

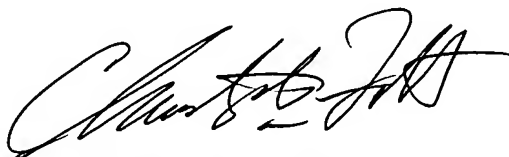
The examiner can normally be reached on Monday-Friday from 8:00AM to 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez, can be reached on (571) 272-2245.

The fax number for this Organization where this application or proceeding is assigned is (703) 872-9306.

Art Unit: 2859

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DIEGO F.F. GUTIERREZ  
SUPERVISORY PATENT EXAMINER  
GROUP ART UNIT 2859

TCC  
May 2, 2005

CHRISTOPHER W. FULTON  
PRIMARY EXAMINER